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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Toshio IMAI et al.

Group Art Unit: 3751

Application No.: 10/517,992

Examiner: S. DOUGLAS

Filed: May 25, 2005

Docket No.: 122084

For: ASEPTIC FILLING METHOD

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the September 11, 2006 Office Action, reconsideration of the application is respectfully requested in light of the following remarks.

Claim 1 is pending in this application. The Office Action rejects claim 1 under 35 U.S.C. §103(a) over U.S. Patent No. 4,450,878 to Takada et al. (hereinafter "Takada") in view of U.S. Patent No. 6,536,188 B1 to Taggart. This rejection is respectfully traversed.

Takada is directed to a system intended to cool polyethylene terephthalate bottles while filling them with high-temperature liquids. Takada characterizes high temperatures as about 90° C, or in the range of 80° to 90° C, for the purpose of sterilization (see col. 1, lines 25-29.)

The Office Action concedes that Takada does not disclose filling the content in the synthetic resin container under a temperature within a range of 50° to 60° C, as is positively recited in claim 1. The Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to fill beverage at the temperatures falling

between 50° to 60° C. However, Takada teaches away from such a method. Specifically, Takada states that the liquid needs to be at a high temperature (*i.e.* 80 to 90° C) when it is poured into the bottle (see col. 2, lines 16-17). Takada further discloses that such fill temperatures are for achieving sterilization effect. As such, it would not have been obvious to one of ordinary skill in the art at the time of the invention to modify Takada by changing the filling temperature of Takada to within the range of 50° to 60° C because that would impermissibly change Takada's method of operation and render it unsuitable for its intended purpose.

MPEP §2145X.D.3 addresses how proceeding contrary to accepted wisdom is evidence of non-obviousness. In this regard, the section highlights that conducting a process at a temperature contrary to accepted wisdom in the art is evidence of non-obviousness. *In re. Hedges*, 783 F.2d 1038, 228, USPQ 685 (Fed.Cir. 1986). To the extent that Takada can be reasonably considered to have suggested a method for aseptic filling, it unequivocally contemplates the filling temperature of the liquid being above 80° C for sterilization purposes.

Further, the temperature range claimed by the present subject matter yields results that are unanticipated by the prior art references. As disclosed in Applicants' specification, filling synthetic containers in the claimed range, that is higher than normal temperature, can reduce or eliminate deformation of the container resulting from subsequent heating (see, e.g., paragraphs [0011], [0017]). Such a result is not taught, nor can it reasonably be considered to have been suggested, by the applied prior art references.

Additionally, the Office Action concedes that Takada fails to disclose a step of rinsing and sterilizing the resin container. The Office Action relies on Taggart to fill this shortfall. The Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a step of rinsing and sterilizing the resin container

in view of the teachings of Taggart to achieve aseptic sterilization. However, Takada achieves sterilization by filling the bottle with high-temperature content, as discussed above. As such, it would not have been obvious to one of ordinary skill in the art at the time of the invention to include additional rinsing and sterilization of the Takada container prior to hot-filling, which is intended for sterilization effect.

For at least these reasons, the references are not combinable in the manner suggested and any permissible combination of the applied prior art references fails to teach, or otherwise render obvious, the combination of all of the features positively recited in independent claim 1. Accordingly, reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a) is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claim 1 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:JEG/hms

Date: October 12, 2006

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